APPEAL NO. 022282
FILED OCTOBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 19, 2002. The hearing officer determined, on the sole issue before him, that the second designated doctor in this case correctly used the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) rather than the fourth edition. The appellant (claimant) argues that a pre-October 15, 2001, report of maximum medical improvement (MMI) and impairment rating (IR) was effectively withdrawn when a designated doctor subsequently certified that MMI had not been reached. The respondent (carrier) argues that the hearing officer was correct in not finding an agreement by the parties to withdraw the earlier certification.

DECISION

We affirm the decision.

While several potential issues are suggested by the scant record of this case, only an issue as to the proper version of the AMA Guides to be used by the second designated doctor was preserved. The CCH in this case was conducted on written submission of documents and arguments only; no testimony was taken.

On August 1, 2001, the carrier's required medical examination (RME) doctor certified that MMI had been reached with a zero percent IR. On October 20, 2001, a Texas Workers' Compensation Commission (Commission)-selected designated doctor stated that the claimant had not reached MMI. There was at least one more IR and certification of MMI by the treating doctor performed in February 2002, using an unspecified version of the AMA Guides. Finally, a second designated doctor, on March 7, 2002, certified that the claimant had reached MMI on August 1, 2001, with a zero percent IR. He used the third edition of the AMA Guides. The hearing officer upheld this, noting that where there is a certification of MMI that is rendered prior to October 15, 2001, a subsequent doctor considering MMI and IR must use the third edition of the AMA Guides under Tex W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(2) (Rule 130.1(c)(2)) in the absence of evidence that the earlier certification was withdrawn by the agreement of the parties or previously overturned by a final decision of the Commission. He cited the lack of evidence in the record of any final decision or evidence from which he could infer the existence of an agreement to withdraw the earlier certification. We agree.

While we do not agree with the carrier that either the 1989 Act or rules require agreement of the parties that resolves a dispute to be written, the hearing officer is correct in noting the absence of evidence concerning conduct of the parties that would indicate agreement. We are unwilling to imply agreements merely from the absence of

a dispute in this case over the first designated doctor's report that MMI was not reached and we cannot fault the hearing officer if he required some evidence of affirmative conduct in this case from which an agreement to actually "withdraw" the RME doctor's certification could be inferred. The record is silent as to whether temporary income benefits were due or even paid after the "not at MMI" report.

The hearing officer has correctly applied Rule 130.1(c)(2)(B)(ii) in this case and we affirm his decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Thomas A. Knapp
Appeals Judge